

EXHIBIT 1

Emergency Petition for Writ of
Mandamus

MARQUIS AURBACH COFFING

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11
12 **IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

13 FRED KRAUS, an individual registered to vote
14 in Clark County, Nevada, DONALD J. TRUMP
15 FOR PRESIDENT, INC.; the NEVADA
REPUBLICAN PARTY,

16 **Petitioners,**

17 **vs.**

18 BARBARA CEGAVSKE, in her official
19 capacity as Nevada Secretary of State, JOSEPH
20 P. GLORIA, in his official capacity as Registrar
of Voters for Clark County, Nevada,

21 **Respondents.**

Case No.
Dept No.

22
23 **EMERGENCY PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**

24 Petitioners, Fred Kraus, Donald J. Trump for President, Inc. and the Nevada Republican
25 Party (herein "Petitioners"), by and through their attorneys, respectfully submits this Petition for
26 Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") against Respondents
27 Barbara Cegavske (the "Secretary"), in her official capacity as Nevada Secretary of State; Joseph
28

1 P. Gloria ("Gloria" or "Registrar"), in his official capacity as Registrar of Voters for Clark County,.
 2 This Petition is brought pursuant to NRS Chapter 34, NRS 293B and is based on the following
 3 Memorandum of Points and Authorities and any oral argument this Court may allow.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 The United States Supreme Court long ago recognized a bright line principle of good
 7 government that runs throughout federal and state law: "[S]unlight," as has so often been observed,
 8 "is the most powerful of all disinfectants." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964).
 9 Indeed, as courts recognize "openness of the voting process helps prevent election fraud, voter
 10 intimidation, and various other kinds of electoral evils." *PG Publishing Co. v. Aichele*, 705 F.3d
 11 91 (3d Cir. 2013).

12 These lofty principles are reflected in the details of Nevada's election laws. As Clark
 13 County Registrar, Gloria was statutorily required to submit a "written plan for the accommodation
 14 of members of the general public who observe the delivery, counting, handling and processing of
 15 ballots at a polling place, receiving center or central counting place" by April 15, 2020. NRS
 16 293B.354(1). However, unlike every other election official in this state, Gloria failed to comply
 17 with his statutory obligation to submit a plan by April 15, 2020. Gloria compounded his complete
 18 disregard for his statutory obligations when he failed and refused to submit a compliant plan for
 19 approval after the passing of Assembly Bill No. 4 ("AB4"). Rather, Gloria proceeded forward with
 20 the election process, while blatantly ignoring both requests by the State and his statutory obligation
 21 to submit a plan pursuant to NRS 293B.354. It appears Gloria believes he and Clark County are
 22 above the law.

23 The result of the Registrar's disregard for his statutory obligations is a total lack of
 24 meaningful observation. Meaningful observation is a right expressly granted to the public under
 25 NRS 293B.353(1), which mandates that the "county or city clerk *shall* allow members of the
 26 general public to observe the counting of the ballots at the central counting place if those members
 27 do not interfere with the counting of the ballots." (Emphasis added). This right is also protected
 28 by AB4, which makes clear "mail ballot central counting board may begin counting the received

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1 mail ballots 15 days before the day of the election” and “[t]he counting procedure must be public.”
 2 AB 4, § 25. Plaintiffs have evidence that Gloria is obstructing the observation process. Gloria must
 3 accommodate meaningful observation to ensure transparency and integrity in the election process
 4 and, since he refused to timely provide a plan to the Secretary for her approval, this Court should
 5 order the Secretary to issue an approved plan for Clark County that assures immediate, meaningful
 6 observation. In the alternative, Petitioners request that the Court prohibit Clark County from
 7 processing and counting ballots until proper procedures are in place to ensure transparency and
 8 integrity in all parts of the process.

9 Finally, in Nevada there is a mechanism for challenging voters who physically show up to
 10 vote. *See* NRS 293.303. However, there is no such mechanism for challenging voters who vote by
 11 mail. Dissimilar treatment in the challenging mechanisms violates the Equal Protection Clause of
 12 the Fourteenth Amendment.

13 **II. LEGAL STANDARD**

14 A writ shall issue “in all cases where there is not a plain, speedy and adequate remedy in
 15 the ordinary course of law.” NRS 34.170; NRS 34.330. “A writ of prohibition is appropriate when
 16 a district court acts without or in excess of its jurisdiction.” *Cote v. District Ct.*, 124 Nev. 36, 39,
 17 175 P.3d 906, 907 (2008) (citing NRS 34.320; *State v. District Ct. (Anzalone)*, 118 Nev. 140, 146-
 18 47, 42 P.3d 233, 237 (2002)). “A writ of mandamus is available to ‘compel the performance of an
 19 act which the law . . . [requires] as a duty resulting from an office, trust or station,’ ” *id.*, 124 Nev.
 20 at 39, 175 P.3d at 907-08 (quoting NRS 34.160), or “to control a manifest abuse or an arbitrary or
 21 capricious exercise of discretion.” *Id.* (citing *Round Hill Gen. Imp. Dist. V. Newman*, 97 Nev. 601,
 22 603-04, 637 P.2d 534, 536 (1981)). “Because both writs of prohibition and writs of mandamus are
 23 extraordinary remedies, [the court has] complete discretion to determine whether to consider
 24 them.” *Id.*, 124 Nev. at 39, 175 P.3d at 908 (citing *Smith v. District Ct.*, 107 Nev. 674, 818 P.2d
 25 849 (1991)).

26 Even when an “arguable adequate remedy exists, this court may exercise its discretion to
 27 entertain a petition for mandamus under circumstances of urgency or strong necessity, or when an
 28 important issue of law needs clarification and sound judicial economy and administration favor

the granting of the petition.” *State v. District Ct.*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002) (citations omitted).

III. ARGUMENT

A. GLORIA REFUSES TO COMPLY WITH NEVADA LAW.

No later than April 15, 2020, the Clark County Registrar was required to “submit to the Secretary of State for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place.” NRS 293B.354(1). In Nevada, each plan must include:

... (a) The location of the central counting place and of each polling place and receiving center; (b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2; (c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and (d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county or city clerk considers appropriate.

NRS 293B.354(3).

No such plan was received by the Secretary prior to election operations beginning in Clark County. Without an *approved* plan in place, observers have noted multiple issues that have precluded them from engaging in meaningful observation, but not limited to:

1. *Observers being prohibited from observing the totality of the process.*

There are certain areas where ballots are handled, reviewed, or the information therefrom is utilized to affirm whether a ballot will be counted, but Gloria has deemed these areas restricted and/or off limits to observers.¹ One such area is the call center, which has been specifically deemed by Gloria as off limits and other rooms are dedicated to resolving ballot issues.² Given that these ballot review processes are necessary in the counting of ballots, observers must be allowed to observe.

¹ See Declaration of Fred Kraus (“Kraus Dec.”), attached hereto as Exhibit I at ¶¶ 10, 20- 21.

² *Id.*

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1 Simply put, the only way to assure transparency in the process is to assure *all* parts of the process
2 are subject to observation and scrutiny.

3
4 2. *Observers engaging in meaningful observation.*³ Unfortunately, Gloria
5 has positioned observers in such a manner that they cannot meaningfully observe. Notably,
6 observers are often located more than 25 feet away from certain processes, and cannot see the
7 computer screens or monitors of individual workers or observe calls made relative to the cure
8 processes.⁴ Observers have also noted that there are certain observation locations where only
9 portions of the processing of ballots can be observed.⁵ Moreover, observers are required to be
10 with “ambassadors” at all times. Unfortunately, there are not enough “ambassadors” to allow
11 consistent and meaningful observation of the entire process.⁶ Without meaningful observation,
12 there cannot be any assurances of transparency.
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17 ³ According to the Election Observation Handbook (6th Ed.) published by the OSCE Office for Democratic
18 Institutions and Human Rights, minimum standards for credible election observation must be met including
19 assuring “that an appropriately secure environment exists, allowing for a meaningful election process to be
20 conducted and for free, unimpeded movement for election observers. The value of election observation is
21 essentially negated if security requirements prevent participants in an election observation activity from
22 obtaining information, moving freely . . . or meeting with all election stakeholders. Under these conditions,
the credibility of any findings can be questioned.” (<https://www.osce.org/files/f/documents/5/e/68439.pdf>).
While this Election Handbook is generally targeted toward burgeoning nations looking to establish fair
elections, it is similarly appropriate here in Nevada where there are serious concerns about assuring fair,
accountable and transparent elections.

23 ⁴ See Declaration of Robert Thomas III (“Thomas Dec.”), attached hereto as Exhibit 2 at ¶¶7-10, 12-15;
24 see also Kraus Dec at. ¶¶8-10, 12-22.

25 ⁵ See Kraus Dec at. ¶17 (stating at ¶8 “8. I was confined to a rectangular space situated at the intersection
26 of the long part of an L shaped room. From this vantage point, I was only able to observe a few tables on
27 the base of the L shape of the room.” In ¶16 “[t]here were 32 tables for ballot examiners. Of which, I was
only able to see 24 of the tables from a distance with all but a few located at a distance such that I could not
engage in meaningful observation.” And, in ¶17 “[t]here were also 7 duplicator tables which were not
visible from my designated area.”)

28 ⁶ See Thomas Dec. at ¶16; see also Kraus Dec at. ¶23.

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1 3. *Ensuring ballot secrecy.* Concerns have arisen amongst observers about
 2 ensuring voters' ballots remain secret.⁷ AB4, Sec. 16.(1)(c) requires that each active registered
 3 voter receive an "envelope or sleeve into which the mail ballot is inserted to ensure its secrecy."
 4 Unfortunately, it has been observed to be the policy and procedure of the Clark County Counting
 5 Board that, immediately after a ballot has been opened, the board member who opened the
 6 envelope reviews the ballot to see if it complies with law.⁸ Should the ballot be rejected, the ballot
 7 is then placed back into the same envelope in which it was received. The result is that the board
 8 member reviewing the ballot knows the identity of the voter who cast the ballot and can now
 9 observe or even record how the individual voted.⁹ Moreover, if the ballot has a deficiency that
 10 requires it to be duplicated by a board member, the envelope is often sent with the ballot to be
 11 duplicated, resulting in yet another board member who can observe how the voter cast his or her
 12 ballot.¹⁰ This procedure no longer assures the secrecy contemplated by AB4 and undermines the
 13 American norm of ballot secrecy.¹¹ Moreover, if the staff member does not agree with how the
 14 individual voted, this knowledge may become an incentive for the staff member to invalidate the
 15 ballot, risking voter disenfranchisement.¹² Given these issues, a process must be implemented such
 16 that, once received, a ballot cannot be placed back in its original envelope but should merely be
 17 placed in "an envelope" as contemplated by AB4, Sec. 25-26.
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 22 ⁷ See Thomas Dec. at ¶18; *see also* Kraus Dec at. ¶28.

23 ⁸ See Thomas Dec. at ¶17; *see also* Kraus Dec at. ¶24.

24 ⁹ *Id.*

25 ¹⁰ See Thomas Dec. at ¶17.

26 ¹¹ "Between 1888 and 1896, nearly every State adopted the secret ballot." *Minnesota Voters All. v. Mansky*,
 27 138 S. Ct. 1876, 1883 (2018). Thus, the secret ballot is a "venerable a part of the American tradition."
Burson v. Freeman, 504 U.S. 191, 214 (1992) (Scalia, J., concurring).

28 ¹² See Thomas Dec. at ¶18; *see also* Kraus Dec at. ¶28.

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1 4. **COVID-19 Concerns.** The Nevada Legislature called a special session to
 2 enact AB4, citing COVID-19 as one of its primary concerns. Similarly, Gloria has limited the
 3 access and number of observers permitted in Clark County facilities, citing similar COVID-19
 4 concerns. In response to this concerns, the Petitioners reached out to Gloria and requested that he
 5 allow the placement of cameras throughout the facility to afford the public the ability to observe
 6 from the safety and security of alternate locations.¹³ In an effort to ensure this was not a financial
 7 burden on Clark County, the Petitioners offered to pay for the cameras, tripods, and other
 8 equipment necessary to allow this alternative method for observation. Further, the Petitioners
 9 offered to host the video feed on its servers and provide feed access to Clark County so they could
 10 similarly monitor the process. This offer was wholly rejected despite the Governor, the Attorney
 11 General, Clark County Commissioners, and numerous Clark County officials calling for everyone
 12 to do their part to stop the spread of the COVID-19 virus. The Petitioners remain willing to do
 13 their part and, at the same time, assure there is safe and meaningful observation of the ballot
 14 counting process at no additional expense to Nevada voters.

15 As noted above, Petitioners have attempted to resolve these issues with Gloria directly to
 16 no avail. Additionally, Petitioners demanded the Secretary implement an approved plan in Clark
 17 County pursuant to NRS 293B.354(3) which: (1) allows observation of the entire ballot counting
 18 process; (2) ensures meaningful observation; (3) affirms ballot secrecy; and (4) accommodates the
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23 ¹³ See Email correspondence between counsel for Petitioners and counsel for Clark County,
 24 attached hereto as Exhibit 3; see also Demand Letter to the Secretary dated October 20, 2020, attached
 hereto as Exhibit 4. Further, NRS 293B.353(2)-(3) provides:

- 25 2. The county or city clerk may photograph or record or cause to be photographed or
 26 recorded on audiotape or any other means of sound or video reproduction the counting of
 the ballots at the central counting place.
 27 3. A registered voter may submit a written request to the county or city clerk for any
 28 photograph or recording of the counting of the ballots prepared pursuant to subsection 2.
 The county or city clerk shall, upon receipt of the request, provide the photograph or
 recording to the registered voter at no charge.

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Petitioners request to place cameras so observation can be done in a safe and secure manner. However, the Secretary of State has failed to implement any such plan. Consequently, Gloria continues to operate without the approval of the statutorily required plan. *See* NRS 293B.354.

The only way to ensure that members of the public are able to meaningfully observe the counting of ballots is for this Court to mandate the Secretary of State approve a plan in Clark County which: (1) allows observation of the entire ballot counting process; (2) ensures meaningful observation; (3) affirms ballot secrecy; and (4) accommodates the Petitioners request to place cameras so observation can be done in a safe and secure manner. Further, this Court must mandate that the Registrar immediately implement the approved plan in Clark County.

B. NEVADA'S CHALLENGING STATUTE VIOLATES THE EQUAL PROTECTION CLAUSE.

In Nevada, there is a mechanism for challenging voters who physically show up to vote. *See* NRS 293.303. However, there is no such mechanism for challenging voters who vote by mail. Dissimilar treatment in the challenging mechanisms violates the Equal Protection Clause of the Fourteenth Amendment.

A state shall not value one person's vote over that of another by arbitrary and disparate treatment. *Bush v. Gore*, 531 U.S. 98, 104 (2000). Doing so violates the Equal Protection Clause of the Fourteenth Amendment. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* at 105 (citing *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)); Voting procedures must be "calculated to sustain the confidence that all citizens must have in the outcome of elections." *Bush v. Gore*, 531 U.S. 98, 106 (2000); *see Charfauros v. Bd. of Elections*, 249 F.3d 941, 952, 954 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (July 6, 2001) ("voter election challenge procedures" that "create[d] two classes of voters" "were flawed and . . . in danger of violating the fundamental rights" of voters).

Even if this dissimilar treatment does not wholly prohibit any citizen's free exercise of the franchise, the dissimilar treatment does debase or dilute the right to vote of those voters who

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1 choose to vote in person. By only subjecting in-person voters to this mechanism for challenge,
 2 Nevada is giving those who vote absentee an arbitrary and backwards advantage over those who
 3 vote in-person. The dissimilar treatment of these voters violates the Equal Protection Clause of the
 4 Fourteenth Amendment. Therefore, this Court should mandate that the two classes of voters—in
 5 person and mail-in—must be treated equally and equally subject to the same challenge procedure.

6 **C. CLARK COUNTY'S IMPROPER USE OF A MACHINE TO**
 7 **AUTHENTICATE VOTERS VIOLATES THE EQUAL PROTECTION**
 8 **CLAUSE.**

9 All Nevada counties, except for Clark County, are visually matching the signatures on the
 10 ballot envelope to the signature on file with the various registrars of voters. Clark County is using
 11 a machine called the Agilis Ballot Packing Sorting System ("Agilis") as an initial effort to match
 12 signatures. If a signature is matched by that machine, then it is not further scrutinized. The Agilis'
 13 manufacturer has recommended settings for tolerance in order to guard against forgeries or other
 14 improper signatures. If a signature is rejected by the machine, then it is reviewed visually by a
 15 county official.

16 Gloria has intentionally lowered the tolerance number in order to decrease the number of
 17 ballots rejected by the machine for improper signatures. Consequently, fewer ballots are being
 18 reviewed visually by county officials and it is more likely that fraudulent and improper ballots are
 19 being tabulated by Clark County. For the election, Gloria ordered that the tolerance level be
 20 lowered from the manufacturer's recommendation to all the way to 40 percent. As a result, Clark
 21 County is catching fewer improperly signed ballots compared to other Nevada counties. For
 22 example, as of October 22, 2020, only 1.45% of mailed ballots in Clark County have been returned
 23 for cure, yet, 3.78% of ballots in Churchill County have been returned for cure.

24 Because of Gloria's unilateral and arbitrary decision to lower the tolerance on the Agilis,
 25 he is making it harder for Clark County officials to catch improper or fraudulent mail in ballots as
 26 opposed to the rest of Nevada. The result is two classes of voters: those whose signatures are
 27 verified by Agilis and those whose signatures are being checked visually by election officials. This
 28 two-tier system violates the fundamental rights of voters in Nevada. *See Bush*, 531 U.S. at 104;
see also Charfauros, 249 F.3d at 952–54. Moreover, the failure of Gloria to take reasonable

1 measures to ensure the authenticity of voters in the most populated county in Nevada may cast
2 doubt on the accuracy of the election. *Id.*

3 **IV. CONCLUSION**

4 Gloria's complete failure to timely submit an election plan as required by Nevada law and
5 further refusal to work with Petitioners to assure meaningful and safe observation of the process
6 is unprecedented. There is a strong public interest in this case and as the election is upon us and
7 ballot processing has already begun, no adequate remedy exists for Petitioners to seek relief other
8 than to request the Court's assistance by way of a Petition for Writ of Mandamus or Writ of
9 Prohibition.

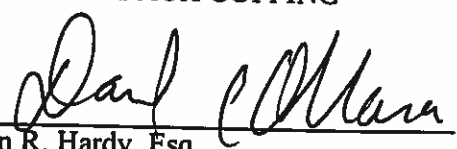
10 For the foregoing reasons, Petitioners respectfully request that the Court mandate the
11 Secretary issue a plan to Clark County that complies with the statutory requirements of NRS 293B
12 and which: (1) allows observation of the entire ballot counting process; (2) ensures meaningful
13 observation; (3) affirms ballot secrecy; and (4) accommodates the Petitioners request to place
14 cameras so observation can be done in a safe and secure manner. Further, this Court must mandate
15 that the Registrar immediately implement the approved plan in Clark County. In the alternative,
16 Petitioners request that the Court prohibit Gloria and Clark County from counting ballots until the
17 proper procedures are in place.

18 Petitioners also request that this Court mandate the same ballot challenge procedures apply
19 to all classes of voters, whether in-person or vote by mail. Finally, Petitioners request that Gloria
20 be prohibited from creating two-classes of voters by using a method of authenticating ballot
21 signatures, not used in the rest of Nevada, that would decrease the ability of election officials from
22 catching fraudulent or improper ballots.

23 Dated this ___ day of October, 2020.

24 MARQUIS AURBACH COFFING

25 By

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IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

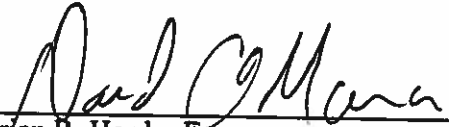
AFFIRMATION

The undersigned does hereby affirm that the preceding document, PETITIONERS' PETITION
FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION,
does not contain the Social Security number of any person.

Dated this 23rd day of October, 2020.

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By


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EXHIBIT 1

EXHIBIT 1

DECLARATION OF FRED KRAUS

Fred Kraus. declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this declaration in support of Petitioner's Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition.

3. I am a Clark County registered voter in the State of Nevada.

4. As a registered voter in the State of Nevada, there is a mechanism for my status as a voter to be challenged because I voted in person, however there is no such mechanism to challenge voters who cast their vote by mail. I am concerned that people like me that are voting in person are having our votes diluted or cancelled because our votes can be challenged, unlike the votes of those that vote by mail.

5. Moreover, as a member of public, I am expressly granted the right to observe the counting of the ballots at the central counting place.

6. On Thursday, October 15, 2020 I went to a Clark County facility located at 2060 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

7. As part of my observation, I observed the preparation of duplicate ballots in lieu of damaged ballots.

8. I was confined to a rectangular space situated at the intersection of the long part of an L shaped room. From this vantage point, I was only able to observe a few tables on the base of the L shape of the room.

9. There were rooms or offices where staff would walk in and out with ballots, but we were not allowed to view the process or conduct of staff in these rooms. For example, at the East Flamingo location there was a room labelled "MB Vault." Inside were large bins with many shelves with blank ballots. I observed staff walking in and out of that room and retrieving blank ballots with green envelopes in their hands that contained ballots and then going to a part of the

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1 room that I could not observe. At the Trade Drive location in the room with the Agilis Machine
2 there was a side door with a small window and a set of steps leading to a floor above. I was not
3 permitted in that room. I was told later by a county employee escorting me out of the Agilis room
4 that there were blank ballots stored upstairs. Before I left that room, I saw an employee returning
5 with papers in a tray.

6 10. For example, once the operations at the tables at Greystone were completed a box
7 of ballots would be taken to a supervisor's office located across from where we were seated that I
8 could not see into. On other occasions, the box of ballots was carried or wheeled in a cart past me
9 to a location that I could not see. However, on being escorted to my small location when I arrived
10 or being escorted out of the room during break times for employees' breaks, I could see that there
11 was an audit area but other than just noticing that area I was unable to observe the operations in
12 this audit area. I was told the boxes would be inspected for compliance with procedures.
13 Ultimately, I would see portable black vaults coming out of the supervisor's office and leaving the
14 room. I was told the portable black vaults contained the finished boxes. The portable black vaults
15 were to be taken to another vault room at Greystone and later were to be returned to the Trade
16 Drive campus. However, we were not permitted any meaningful opportunity to see what the
17 supervisor was looking to do during her inspection or what the process was in the audit area or, in
18 either case, to observe the sealing of the boxes for transport back to the Trade Drive location.

19 11. On Friday, October 16, 2020, I returned to the Clark County facility located at 2060
20 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

21 12. I was escorted to the same area as the day before for observation. Although I was
22 able to walk past the duplicator desks, I was not given any time to make observations.

23 13. I viewed ballot examiners place defective ballots in a green folder. Roving
24 employees would then take these green folders to the ballot duplicators which were not visible
25 from the viewing area, but would often, but not in all cases, enter the Master Ballot Room where
26 sometimes I could see from a distance their removing a blank ballot and leaving the room and
27 heading in the direction of the duplicating tables.
28

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14. On Saturday, October, 17, 2020, I returned to the Clark County facility located at 2060 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

15. I was allowed to observe in the same confined area as the previous days.

16. There were 32 tables for ballot examiners. Of which, I was only able to see 24 of the tables from a distance with all but a few located at a distance such that I could not engage in meaningful observation.

17. Notably, I could only hear what was being discussed at the few tables closest to me. There were also 7 duplicator tables which were not visible from my designated area.

18. On Tuesday October 20, 2020, I went to a Clark County facility located at 965 Trade Dr., North Las Vegas, NV 89030.

19. I observed the scanning/tabulation of ballots in the scanning room. The scanning room is an enclosed area with two sections. The section closest to the observation area has a glass window and the scanning operation takes place in that room. That room is connected to a back room which has a glass wall facing the observers.

20. It was impossible for me to determine what processes were happening in the back room because the designated area for observers was too far away.

21. I was shown two offices which were dedicated to resolving rejected ballot issues. These offices were referred to as the Freedom Room and the Liberty Room. The Freedom Room was staffed, but I was not allowed to enter or observe.

22. The Liberty Room was not staffed and I was not allowed to enter.

23. During my observation, I was required to be with ambassadors or minders at all times. Unfortunately, there are not enough ambassadors to allow for more than a few observers and the function of the ambassadors or minders is to make sure we were only able to observe operations from specified locations, which would not permit a consistent and meaningful observation of the entire process.

24. I was told by one of my ambassadors or minders at the East Flamingo location that the only function performed there was an examination of ballots to see if the ballots were damaged, soiled or obscured in some way such that they would not be suitable for tabulating when returned

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1 to the Trade Drive location. However, I observed small envelopes at the tables I could see that
2 were labelled for rejected ballots. When I inquired about the rejection envelopes, I was told that
3 the only rejection that takes place at Greystone is when a voter signs the ballot. However, there
4 were white sheets of paper attached to the glass or plexiglass at each table that were labelled
5 "Rejected Ballot Codes" and which then listed seven (7) rejection codes. Rejection for a voter
6 signing the ballot was not among the rejection codes listed. The instructions in one rejection
7 category included a requirement that the employee "Find the ballot envelope with the voter's name
8 on it" and "place the ballot back in the ballot return envelope."

9 25. I also noticed a sign on the wall that stated "Rejecting Identified Ballots" which
10 was not consistent with an operation limited to examining ballots for those not machine worthy.

11 26. I was able to observe on a number of occasions that workers at tables placed
12 documents in Rejected Ballot envelopes. In addition, on the morning of October 17, 2020, I
13 overheard a worker at the table located just outside the offices across from me mention to a
14 supervisor that one of her envelopes had 2 ballots inside. That would be a rejection code of RT
15 from the Rejected Ballot Code papers affixed to each table working area. So, the statement made
16 to me on October 15, 2020 that the only rejected ballots processed at the East Flamingo location
17 were those where the voter signed or initialed the ballot was incorrect

18 27. I did see a Rejected Ballot envelope sitting on top of the completed trans file at a
19 table where I overheard the employee mention to her supervisor that she had an envelope with 2
20 ballots. While I could not see the worker insert the ballots and the return ballot envelope, which
21 contains the voter's signature, into the Rejected Ballot envelope, I believe that she did so and thus
22 would have been able to observe the name of the voter who signed the return ballot envelope. I
23 believe this because one of the signs on the walls was entitled "Rejecting Identified Ballots." The
24 instructions in that separate rejection category included a requirement that the employee "Find the
25 ballot envelope with the voter's name on it" and "place the ballot back in the ballot return
26 envelope." In addition, when a ballot is rejected the only way to identify whose ballot was rejected
27 would be to place both the ballot and the return ballot envelope, which identified the voter whose
28 ballot was rejected, in the rejected ballot envelope.

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Fred Kraus

EXHIBIT 2

EXHIBIT 2

DECLARATION OF ROBERT E THOMAS III

Robert E. Thomas, III, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this declaration in support of Petitioner's Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition.

3. I am a Nye County registered voter in the State of Nevada.

4. As a registered voter in the State of Nevada, there is a mechanism for my status as a voter to be challenged if I physically show up to vote, however there is no such mechanism for voters who vote by mail to be challenged. I'm worried that the votes of people who vote in person will be diluted because it is possible to challenge them as opposed to people who vote by mail.

5. Moreover, as a member of public, I am expressly granted to the right to observe the counting of the ballots at the central counting place.

6. On Monday, October 19, 2020 I went to a Clark County facility located at 965 Trade Dr., North Las Vegas, NV 89030 to observe mail ballot processing.

7. As part of my observation, I observed the AEGILIS machine. The observation area for the AEGILIS machine was at the end of the room.

8. The observation area was approximately 25ft away from the monitor that controlled the operation of the AEGILIS machine, and I was not able to see the monitor screen.

9. I noticed the machine would sporadically have mechanical issues. The worker would then go talk to support staff who would come to the monitor to correct something.

10. I was not close enough to see what was corrected or what the error was.

11. While there was a break, I asked my ambassador [an Extra-Help employee hired to escort observers] to see the screen. My ambassador said she talked to Joe Gloria and I was not allowed to see the screen. However, I was told there was an ongoing issue with the AEGILIS machine matching signatures from the DMV.

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1 12. The observation I was allowed to do was meaningless because I could not see the
2 process in its entirety and my ambassador could not answer some of my questions.

3 13. On Monday, October 19, 2020, I was also observing the verification stations at the
4 same Clark County location. The observation area for the verification station is partitioned away
5 from the station with plexiglass. The computer screens in the verification station are too far away
6 from observers to have meaningful observation and the observers cannot hear the telephone calls
7 being made.

8 14. On Wednesday, October 21, 2020 I returned to the Clark County facility located at
9 965 Trade Dr., North Las Vegas, NV 89030 to observe mail ballot processing.

10 15. As part of my observation, I observed ballot counting in a room with a wall of
11 windows, like a fishbowl. I was stationed outside of the room looking in through the windows.
12 Each station in the room has a computer monitor and terminal. As an observer, while I could
13 identify an error message appear on the monitors, I was unable to read what the error was because
14 the observation area was too far away.


15 16. During my observation, I was required to be with ambassadors at all times.
16 Unfortunately, there are not enough ambassadors to allow consistent and meaningful observation
17 of the entire process.

18 17. It was my observation that after a ballot has been opened, the staff member who
19 opened the envelope reviews the ballot. I am informed and observed that if a ballot is rejected, the
20 ballot is then placed back into the same envelope in which it was received. The result is that the
21 board member reviewing the ballot knows the identity of the voter who cast the ballot and can now
22 observe or even record how the individual voted. Moreover, I am informed that if the ballot has a
23 deficiency that requires it to be duplicated by another staff member, the envelope is sent with the
24 ballot to be duplicated, resulting in yet another staff member observe how the voter cast their
25 ballot.

26 18. This process is concerning because it does not ensure ballot secrecy and if the staff
27 member does not agree with how the individual voted, this knowledge may become an incentive
28 for the staff member to invalidate the ballot, risking voter disenfranchisement.

1 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of
2 Nevada that the foregoing is true and correct.

3 Dated this 22nd day of October, 2020.

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7 Robert E. Thomas III
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EXHIBIT 3

EXHIBIT 3

Brian R. Hardy

From: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Sent: Tuesday, October 20, 2020 7:36 AM
To: Brian R. Hardy
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

Thanks for the update. One of the many concerns is that a NVGOP person would control the feed. Knowing what we know, other people would complain about that and want to control it. Given what we have gone through to date, we do not think it would markedly improve the disruptiveness of observers.

From: Brian R. Hardy <bhardy@maclaw.com>
Sent: Monday, October 19, 2020 3:23 PM
To: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

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Mary-Anne

I want to make sure you understand the request in case I was not clear, the request that I made was for the County to allow the NVGOP to set up tripods with cameras mounted on them that would broadcast and record a feed that can be accessed by observers (and County officials) offsite. As I am sure you can imagine, if they are observing offsite, they will no longer be your problem or disruptive to your operations. Please let me know if this clarification changes your opinion as we still stand by ready to place the cameras and tripods as soon as possible.

Thanks

Brian



**MARQUIS AURBACH
COFFING**

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From: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Sent: Monday, October 19, 2020 10:28 AM
To: Brian R. Hardy <bhardy@maclaw.com>
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

Hello Brian,

At this time, the Election Department is not comfortable with non County individuals filming operations. The Election Department has been very accommodating allowing observers in most aspects of the Election Department operations, even though the department is not required to. The observers have very disruptive to our operations and we will continue to accommodate their presence as long as possible. We do not believe, however, that cameras operated by observers with no rules will eliminate any of those problems, but rather add to them.

Thanks,

MARY-ANNE MILLER
COUNTY COUNSEL
OFFICE OF THE DISTRICT ATTORNEY | CIVIL DIVISION
702 455 4761 | MARY-ANNE.MILLER@CLARKCOUNTYDA.COM

From: Brian R. Hardy <bhardy@maclaw.com>
Sent: Monday, October 19, 2020 8:33 AM
To: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Subject: Video Observation [IWOV-iManage.FID1124849]

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Mary-Anne

Thank you for speaking with me last week about resolving the concerns raised by observers and officials related to observers. As we discussed, the NVGOP is willing to coordinate with County officials and will pay for placement of cameras in certain observation areas to allow full and complete access to observers while allowing them to meet all social distancing and other COVID related guidelines. Additionally, this option will help to minimize the impact on County officials and staff who are tasked with assisting the observers and escorting them in and out of certain areas. My clients have procured the cameras, tripods and other equipment and would like to coordinate with the County as soon as possible to get these into place. I am told they are available as early as this afternoon to get the cameras in place and open up the online viewing portal. Please let us know if we will be able to get these cameras in place and, if not, what reasons the County has for not facilitating this request.

Thanks

Brian



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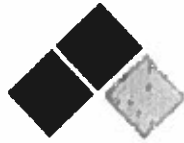
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EXHIBIT 4

EXHIBIT 4



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SCOTT A. MARQUIS
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JAMES A. BECKSTROM
COLLIN M. JAYNE
ALEXANDER K.
CALAWAY
SCOTT W. CARDENAS
SUSAN E. GILLESPIE

JOHN M. SACCO [RET.]
LANCE C. EARL
WILLIAM P. WRIGHT
BRIAN R. HARDY
JENNIFER L. MICHELI
OF COUNSEL

October 20, 2020

Via Email sosmail@sos.nv.gov and Regular Mail

Secretary of State
Attn: Barbara K. Cegavske
Nevada State Capitol Building
101 North Carson Street, Suite 3
Carson City, NV 89701

Re: Transparency in Nevada Elections

Ms. Cegavske:

Please be advised that this firm represents Donald J. Trump for President, Inc. (the "Trump Campaign") and the Nevada Republican Party ("NVGOP"). As such, please direct all future correspondence to this office. We have learned that, despite multiple requests from your office, Clark County failed to timely submit its plan for accommodation of members of the general public who observe delivery, counting, handling and processing of ballots under NRS 293B.354(1). In fact, Clark County's dereliction is not merely a failure to timely submit its plan. Rather, Clark County has chosen to ignore its statutory obligations and simply did not submit any "written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place." One would hope that this is not a calculated attempt to allow Clark County to obstruct the observation process.¹ However, given recent complaints, observations and rejected accommodations, the reality in Clark County is obstruction. As such, demand is hereby made that your office immediately step in and inform Clark County that a number of its current observation protocols (which were never submitted to your office for approval) are unacceptable and that

¹ One would also have hoped that this statutorily required written plan would have been timely submitted by April 15, 2020. Even if Clark County somehow anticipated legislative changes would be

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Clark County must accommodate meaningful observation² to assure transparency in the election process.

Clark County observers have noted multiple issues that have precluded them from engaging in meaningful observation including, but not limited to:

1. ***Observers are being prohibited from observing the totality of the process.*** There are certain areas where ballots are handled, reviewed, or the information therefrom is utilized to affirm whether a ballot will be counted, but Clark County has deemed these areas restricted and/or off limits to observers. One such area is the call center, which has been deemed by Clark County as “off limits.” Given that these ballot review processes are deemed necessary by Clark County in the counting of ballots, observers must be allowed to observe. Simply put, the only way to assure transparency in the process is to assure all parts of the process are subject to observation and scrutiny.
2. ***Engaging in Meaningful Observation.***³ Unfortunately, Clark County has positioned observers in such a manner that they cannot meaningfully observe. Notably, observers are often located more than 30 feet away from certain processes, cannot see the computer screens or monitors of individual workers, or observe calls made relative to the cure processes being engaged in by Clark County in the counting of ballots. Moreover, observers are required to be with “ambassadors” at all times, and there are not enough observers to allow consistent observation of the process. Without meaningful observation, there cannot be any assurance of transparency.

forthcoming, however, it should have submitted a compliant plan under the new statutes shortly after the passing of Assembly Bill No. 4 (“AB4”).

² NRS 293B.353(1) clearly provides that the “county or city clerk *shall* allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.” (Emphasis added).

³ According to the Election Observation Handbook (6th Ed.) published by the OSCE Office for Democratic Institutions and Human Rights, minimum standards for credible election observation must be met including assuring “that an appropriately secure environment exists, allowing for a meaningful election process to be conducted and for free, unimpeded movement for election observers. The value of election observation is essentially negated if security requirements prevent participants in an election observation activity from obtaining information, moving freely ... or meeting with all election stakeholders. Under these conditions, the credibility of any findings can be questioned.” (<https://www.osce.org/files/f/documents/5/e/68439.pdf>). While this Election Handbook is generally targeted toward burgeoning nations looking to establish fair elections, it is similarly appropriate here in Nevada where there are serious concerns about assuring fair, accountable and transparent elections.

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3. **COVID Concerns.** The Nevada Legislature called a special session to enact AB4, citing COVID-19 as one of its primary concerns. Similarly, Clark County has limited the access and number of observers permitted in its facilities, citing similar COVID-19 concerns. As such, the NVGOP reached out to Clark County and requested that Clark County allow the placement of cameras throughout the facility to afford the public the ability to observe from the safety and security of alternate locations.⁴ In an effort to assure this was not a financial burden on Clark County, the NVGOP offered to pay for the cameras, tripods, and other equipment necessary to allow this alternative method for observation. Further, the NVGOP offered to host the video feed on its servers and provide feed access to Clark County so they could similarly monitor the process. This offer was wholly rejected despite the Governor, Clark County Commissioners, and Clark County officials calling for everyone to do their part to stop the spread of the virus. The NVGOP and the Trump Campaign remain willing to do their part and, at the same time, assure there is safe and meaningful observation of the ballot counting process at no additional expense to Nevada voters.

In addition to the foregoing, concerns have arisen amongst observers about ensuring voters' ballots remain secret. As you are aware, AB4, Sec 16.(1)(c) requires that each active registered voter received an "envelope or sleeve into which the mail ballot is inserted to ensure its secrecy." Unfortunately, it has been observed to be the policy and procedure of the Clark County Counting Board that, immediately after a ballot has been opened, the board member who opened the envelope reviews the ballot to see if it complies with law. Should the ballot be rejected, the ballot is then placed back into the same envelope in which it was received. The result is that the board member reviewing the ballot knows the identity of the voter who casts the ballot and can now observe or even record how the individual voted. Moreover, if the ballot has a deficiency that requires it to be duplicated by a board member, the envelope is often sent with the ballot to be duplicated, resulting in yet another board member who can observe how the voter cast his or her ballot. The concern here is two-fold: First, this procedure no longer assures the secrecy contemplated by AB4 and undermines the American norm of ballot secrecy.⁵ Second, if the Clark

⁴ NRS 293B.353(2)-(3) provides:

2. The county or city clerk may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.
3. A registered voter may submit a written request to the county or city clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county or city clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.

⁵ "Between 1888 and 1896, nearly every State adopted the secret ballot." *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1883 (2018). Thus, the secret ballot is a "venerable a part of the American tradition." *Burson v. Freeman*, 504 U.S. 191, 214 (1992) (Scalia, J., concurring).

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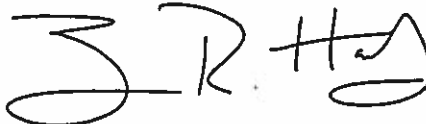
County staff member does not agree with how the individual voted, this knowledge may become an incentive for the staff member to invalidate the ballot, risking voter disenfranchisement. Given these issues, we would ask that your office issue a clarification notice to Clark County (and all counties) that, once received, a ballot cannot be placed back in its original envelope but should merely be placed in "an envelope" as contemplated by AB4, Sec. 25-26.

Please understand that the NVGOP and the Trump Campaign take seriously the integrity of the election process and will not stand idly by while certain officials tread on the rights of the people to participate in the election and have their votes counted. As such, unless the your office directs Clark County to: (1) allow observation of the entire ballot counting process; (2) assure all such observation is meaningful observation; and (3) accommodate the request of the NVGOP and the Trump Campaign to place cameras so observation can be done in a safe and secure manner, then the NVGOP and the Trump Campaign will have no alternative other than to seek legal relief. Further, we would ask that you review the process utilized by Clark County which undermines the secrecy of ballots and provide a directive to all counties clarifying their obligations relative to such processes.

As always, we appreciate your prompt attention to this matter and, if you have any questions, comments, concerns, or wish to discuss the foregoing further, please feel free to contact the undersigned directly.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read "BR Hardy", written over the printed name of the signatory.

Brian R. Hardy, Esq.

BRH:mm

Cc: Mary-Anne Miller (Mary-Anne.Miller@clarkcountyda.com); Joe P. Gloria (jpg@ClarkCountyNV.gov) Mark Wlaschin (mwlaschin@sos.nv.gov) and Greg Zunino (GZunino@ag.nv.gov)